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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. JESSIE DEE PRITCHETT, Defendant and Appellant.	F077091 (Super. Ct. No. VCF134527) **OPINION**

APPEAL from an order of the Superior Court of Tulare County. Gary L. Paden, Judge.

John F. Schuck, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Michael A. Canzoneri and George M. Hendrickson, Deputy Attorneys General, for Plaintiff and Respondent.

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INTRODUCTION

Defendant Jessie Dee Pritchett appeals the grant of a petition to commit him as a sexually violent predator (SVP) under Welfare and Institutions Code section 6601.

Before a bench trial, defendant asked to be transferred back to Coalinga State Hospital (CSH) from the Tulare County jail. The court granted defendant's request to be transferred back to CSH and the case proceeded to trial. Defendant only appeared for his testimony. On appeal, he argues he did not waive his right to be present during the SVP trial, and his fundamental rights were violated when the trial proceeded in his absence.

We affirm the commitment order.

PROCEDURAL HISTORY

In 2011, the People filed a petition to commit defendant as an SVP pursuant to Welfare and Institutions Code section 6600 et seq. In April 2014, the court held a pretrial hearing and scheduled a jury trial setting hearing two months later. Defendant asked the court, "And that will be without me having to show up here?" The court responded, "You do not have to be here. Is that okay?" Defendant responded, "Yeah."

The matter did not proceed to trial until over three and a half years later. On Tuesday, January 23, 2018, defendant waived a jury trial in favor of a bench trial. Before proceeding, the court stated it could send defendant back to CSH over the weekend if defendant preferred. Defendant responded he preferred staying at CSH because the Tulare County jail would only provide him generics of his prescription medications, which he did not believe were comparable. The court ordered the Tulare County jail to give defendant the medications he brought with him from CSH. Defendant also reported he was unable to retrieve his hygiene items, food, and AM/FM radio when he was in the Tulare County jail. The court indicated it would do what it could with regard to that issue.

The next day, defendant was again present and defense counsel voiced frustration on his behalf. Defense counsel notified the court the jail did not provide defendant with any of his items after processing him, including his medications. Defense counsel reported, defendant "has indicated … that if he's not going to be afforded that by being housed at Tulare County, then he essentially wants to waive his presence for the majority

of the trial. [¶] Obviously he's here today. He wants to waive his presence for the majority of the trial. We discussed it this morning." Defense counsel explained further:

> "Obviously, if he were to testify, he would be here. But other than that, and today, he does not want to subject himself to the treatment at Tulare County Sheriff's Office. He's concerned that if he's denied these things continuously while he's staying here, for lack of a better phrase, he might lose his composure. That will get him in hotter water with the law and the court. He doesn't want to subject himself to that.
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> "He's been denied everything that we discussed late yesterday afternoon, so he feels that's going to continue. He does not have any assurance that he will get those things. And so that will be his request. I've explained to him also—the benefits to him, as well as the burdens to him by not being here.
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> "If we continue the trial without his presence, frankly, speaking as it comes to the doctors, I don't really feel—and [defendant] agrees with me, that his presence is all that's [*sic*] necessary for me to cross-examine the doctors on how they came to their conclusion. He and I both agree that's not really a necessary thing. Only if he testifies.
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> "As of today, we're trying to work on a stipulation as to some testimony. We haven't reached an agreement yet. We're still working on that."

The court expressed its disappointment the jail did not follow its minute orders and asked a deputy to investigate. It noted waiving defendant's appearance "during some or part of this proceeding and then bringing him back for one day, maybe during his testimony, might work out to everybody's benefit." However, the court reiterated to defendant he had the right to be present and the right to confrontation:

> "[Y]ou have a right to be here during the entire proceedings. You have a right to confront and cross-examine personally anybody who would testify against you. You can waive that right, if you so desire. I'll send you back to [CSH] and bring you back one day next week, if that's your request, for your testimony, sir. But that's a decision I want you to make after talking to your lawyer. I can send you today, I can send you at the end of the day. We can wait to see what happens tomorrow. If the same thing happens tomorrow, I'll send you out on your way. I will promise you, I will try to

follow up with the jail and solve this problem. But I can't guarantee that will happen. [¶] Does that make sense to you, sir?"

Defendant stated he had "completely made up [his] mind" and that, aside from when his counsel needed him present, he "prefer[red] to be back at [CSH]." The court stated it would enter an order to bring defendant back the following week the night before he was scheduled to testify. Defendant responded he did not want to stay. After counsel reached stipulations on the testimony of certain witnesses, defense counsel reported there was nothing left to present until the following week. He emphasized defendant's request to return to CSH:

> "[Defendant] has made abundantly clear to me, and I think to the Court, he doesn't want to be housed in Tulare County. He wants to go back to [CSH]. There are medications that he needs, psychotropic, there's blood pressure medication, there's certain antacid medication, there's certain general health medications that he has for pain and discomfort that he's taking that he's just not getting here at the jail. That's his primary concern as to why he wants to return to [CSH]. He's receiving all those medications regularly and timely there.
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> "So it is his request to be transported back as soon as possible to [CSH], today hopefully, and return there. And then I will follow up with him Friday as to whether he wants to return for the testimony next week, or whether he's willing to waive his presence for next week, his testimony by the doctors."

The court responded it would recess until Monday and it would have defendant "brought over if he wants to be here, or if he doesn't want to be here, he can waive his appearance." The court notified defendant he would "be transported back as soon as possible," but the issue remained as to when he would come back, "whether it would be Monday, and stay Monday, Tuesday, Wednesday, while the three doctors testify," and then defendant could testify if he wanted; or he could "come back on the day [he] testif[ies] only, and … waive [his] presence for Monday, Tuesday and Wednesday … while the doctor is testifying." The court then discussed next steps with defendant:

"[THE COURT:] Now, what I'd like for you to do, because I know you're frustrated this morning. I'm not real sure I can get a real waiver from you. Your lawyer is going to call on Friday, get back to [CSH], have a chance to have all your medications, and for lack of a better word, settle down a little bit. I know you are upset. And then you tell your lawyer about whether you want to be here for the doctors, or whether you want to be here only for your testimony, and then he'll relay that to us. [¶] Tell me how you feel about that, … would that work for you?

"THE DEFENDANT: It will do for now.

"THE COURT: If you have a change of mind, will you let your lawyer know?

"THE DEFENDANT: Yes, I will.

"THE COURT: And he'll contact you on Friday and we'll line up a plan for next week. Fair enough?

"THE DEFENDANT: (Nodding affirmatively.)

"THE COURT: Yes?

"THE DEFENDANT: Yes."

In its minute order for the day, the court noted, "Defendant is waiving his appearance for Court Trial."

The following Monday defendant was not present and his counsel informed the court he was unable to reach defendant on Friday. Defense counsel noted, however, it was defendant's "intention as of Wednesday, and I think it will continue to be that through the large portion of this trial, which—upcoming will be the testimony of the three doctors, his intention was to not be present during that time." The court asked defense counsel to "verify that" and whether defendant intended to testify. No witnesses were presented that day. In its minute order for the day, the court stated "Defendant presence waived."

The next day, defense counsel again stated he was unable to reach defendant and was going to send an investigator to talk to defendant that day or the next. The court

responded defendant could testify the following afternoon or Thursday morning. The People then presented their two witnesses, Drs. Roger Karlsson and Christopher Matosich. In its minute order for the day, the court stated, "Defendant waives appearance."

The next day, defendant was again not present. Defense counsel again reported he tried to reach defendant but to no avail. The court agreed to attempt to call defendant after defense counsel presented Dr. Caroline Murphy to determine if defendant wanted to appear to testify and/or attend the remainder of the trial. In its minute order for the day, the court stated, "Defendant presence waived." There was no further discussion of the issue on the record that day, but defendant appeared at trial the following day to testify. The court stated defendant notified his counsel the previous day he wanted to testify.

FACTUAL BACKGROUND

The People presented two doctors at trial. Dr. Roger Karlsson testified he evaluated defendant in 2011, 2012, 2015, and 2017; defendant only participated in interviews in October 2015 and February 2017. Based on his evaluation of defendant, Dr. Karlsson diagnosed defendant with two disorders described in the Diagnostic and Statistical Manual of Mental Disorders: "'other specified paraphilic disorder'" and "'antisocial personality disorder.'" He explained "other specified paraphilic disorder" involves a combination of sexual sadistic and nonconsensual features, meaning defendant is aroused by a nonconsensual victim and the infliction of pain and suffering on a victim. Antisocial personality disorder manifests as a person without a moral compass, who does not understand right from wrong, is often aggressive and impulsive, and who blames others for their misfortune. Dr. Karlsson explained individuals with antisocial personality disorder do not learn from experience, so prison or jail "doesn't really do much for them," "[t]hey will be released and then they resort to the same kind of behavior."

Dr. Karlsson explained defendant's sexual offense committed against a prostitute, J.G., was a "textbook example of sexual sadism disorder." During that offense, defendant propositioned J.G. for sexual services on the street and she said no. After two or three more rejections over a period of days, J.G. eventually agreed, but defendant was unable to perform when they went to J.G.'s residence. J.G. said "let's call it quits," at which point defendant grabbed a pair of scissors and put them to J.G.'s neck. He raped her while holding the scissors against her throat. Dr. Karlsson explained, "[T]he important thing here to understand why this is related to sexual sadism disorder is that when he's trying to have conventional sex with the victim, he can't obtain an erection."

Dr. Karlsson also referenced an incident with 15-year-old victim A.J. in 1999 during which defendant put on black gloves before punching and beating the victim and then raping her. Dr. Karlsson opined the use of black gloves is a symbol of power and brutal force among people who practice sadistic sex. The incident with A.J. also reflected his "fixational sodomy." Dr. Karlsson further opined, "[G]iven all this evidence, I would say that it seems likely that [defendant] is aroused by sexually sadistic acts" and "he has to have non-consensual arousal when he commits sex offenses." Dr. Karlsson discussed an incident with victim T.R. in which T.R. "clearly showed [defendant] she didn't want to have sex with him" and he repeatedly propositioned her and eventually "forced himself inside [her] apartment."

Dr. Karlsson explained "the important part in [defendant's] case [is] … his criminal records. How he repeats the same thing over and over …. [¶] He's violating the law over and over again. He does not seem to learn from his mistakes." Defendant's lack of impulse control was "severe." Citing defendant's juvenile arson and vandalism charges, Dr. Karlsson testified "we can see that this pattern had already been developed while he was a teenager." Dr. Karlsson also discussed defendant's "lack of control within the prison setting," noting defendant had many infractions in prison and "he actually seemed to have committed two rapes in the prison setting of male inmates"

despite the presence of correctional officers and other prisoners. Dr. Karlsson testified the lack of control was "unique" in that Dr. Karlsson had only "evaluated two or three out of … up to 600 SVP evaluations where … the person commit[ed] rapes within the correctional system."

Dr. Karlsson testified the Static-99 test evaluates the likelihood a person will reoffend based on his past; the higher an individual's score on the Static-99, the more likely the individual will reoffend. There are six different risk levels in the assessment, and defendant scored in the highest range attributed to individuals: "well above average risk." Defendant also scored in the high range of the Hare Psychopathy Checklist. Dr. Karlsson testified defendant did not believe anything was wrong with him; with regard to his sex offenses, defendant did not believe he did anything wrong and blamed others. Dr. Karlsson opined defendant was likely to reoffend in a sexually violent manner based on his mental disorder.

That same day, Dr. Christopher Matosich also testified on the People's behalf. Dr. Matosich initially evaluated defendant in 2011 and then conducted three additional updates to his evaluation in 2012, 2015, and 2017. Like Dr. Karlsson, Dr. Matosich also diagnosed defendant with other specified paraphilic disorder and antisocial personality disorder and determined defendant had a high risk of reoffending based on his Static-99 score. He further noted defendant "has absolutely refused sex offender treatment."

The next day, defense expert Dr. Caroline Murphy testified. She also diagnosed defendant with antisocial personality disorder, which she did not believe was a qualifying mental disorder in an SVP evaluation. However, Dr. Murphy did not conclude defendant has a paraphilic disorder as Drs. Karlsson and Matosich had opined; she believed defendant's conduct was motivated by his personality, over which he has control, as opposed to the result of a condition. She disagreed the evidence established defendant was aroused by "the fact that someone is not consenting, or [is] arous[ed by] the shame, suffering or humiliation of a victim." Rather, she saw "consenting sexual acts that end up

aggressive, violent when someone does not permit him to not use a condom. Or a partner who is engaging consent of sexual activity [*sic*], and on one or two occasions it gets rough and forceful." She further concluded, because she did not diagnose defendant with a qualifying mental disorder, defendant did not meet the criteria to keep him in a secure facility to protect the health and safety of others. However, Dr. Murphy noted she agreed with the risk analyses done by Drs. Karlsson and Matosich and also concluded defendant was high risk and that "[p]redatory criterion" had been met. She, too, acknowledged defendant would not participate in treatment to date, but she stated she did not know what the court should do with him since he did not meet the criteria for commitment.

Defendant testified on his own behalf. He admitted entering pleas to the qualifying offenses but denied committing the underlying conduct. Specifically, he denied sodomizing two of his fellow inmates in prison.

The court found beyond a reasonable doubt that defendant met the criteria for commitment as an SVP as set forth in Welfare and Institutions Code sections 6600 and 6600.1. In so holding, the court noted there was no question defendant had been convicted of two sexually violent offenses, and it found the testimony of those victims compelling. The court further stated there was no question defendant had a mental disorder—antisocial personality disorder—and it agreed with the People's experts that the acts committed by defendant were consistent with a paraphilic disorder. It also concluded there was an extremely high risk of defendant reoffending. The court commented that defendant "was sexually aroused by non-consenting partners," his "intent is to humiliate them or cause or inflict pain," he "d[e]rives a sexual pleasure, gratification on [*sic*] such acts." Accordingly, "to ensure the health and safety of others it is necessary that he remain in a secure facility."

DISCUSSION

In his sole issue on appeal, defendant contends the court committed reversible error by proceeding with the trial in his absence.

I. Standard of Review and Applicable Law

The Sexually Violent Predator Act (SVPA; Welf. & Inst. Code, § 6600 et seq.) provides for the involuntary civil commitment of certain offenders found to be SVP's. The SVPA defines an SVP as "a person who has been convicted of a sexually violent offense against one or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior." (§ 6600, subd. (a)(1).) "Proceedings to commit an individual as a[n SVP] in order to protect the public are civil in nature." (*People v. Allen* (2008) 44 Cal.4th 843, 860.)

"The role of an appellate court in reviewing a finding of voluntary absence is a limited one. Review is restricted to determining whether the finding is supported by substantial evidence." (*People v. Espinoza* (2016) 1 Cal.5th 61, 74; accord, *People v. Concepcion* (2008) 45 Cal.4th 77, 84.) However, the California Supreme Court has also held "'[a]n appellate court applies the independent or de novo standard of review to a trial court's exclusion of a criminal defendant from trial, either in whole or in part, insofar as the trial court's decision entails a measurement of the facts against the law.'" (*People v. Gutierrez* (2003) 29 Cal.4th 1196, 1202; see *People v. Waidla* (2000) 22 Cal.4th 690, 741; see also *People v. Panizzon* (1996) 13 Cal.4th 68, 80 ["The voluntariness of a waiver is a question of law which appellate courts review de novo"].) "'In determining whether a defendant is absent voluntarily, a court must look at the "'totality of the facts."'" (*People v. Espinoza*, *supra*, at p. 72; see *People v. Gutierrez*, *supra*, at p. 1205.)

II. Analysis

The parties dispute defendant's right to be present during the commitment trial, whether he voluntarily waived that right, and whether his absence was prejudicial. For the foregoing reasons, we conclude defendant had a due process right to be present

during his commitment trial that he voluntarily waived and, irrespective, he has not established prejudice.

A. Defendant had the right to be present during his SVP trial

The People assert defendant did not have a statutory or constitutional right to be present during his commitment trial. However, while the SVPA does not expressly address a defendant's right to be present at the initial commitment trial,[1] the California Supreme Court has held, "[b]ecause civil commitment involves a significant deprivation of liberty, a defendant in an SVP proceeding is entitled to due process protections." (*People v. Otto* (2001) 26 Cal.4th 200, 209.) And "'due process guarantees [a criminal defendant] the right to be present at any "stage … that is critical to [the] outcome" and where the defendant's "presence would contribute to the fairness of the procedure."' [Citation.]" (*People v. Cunningham* (2015) 61 Cal.4th 609, 633; see *People v. Fisher* (2009) 172 Cal.App.4th 1006, 1013 ["[I]n civil commitment proceedings, due process guarantees the right to be present during the presentation of evidence absent personal waiver or demonstrated inability to attend"].) Accordingly, it follows that defendant had a due process right to be present during his commitment trial.

B. Defendant voluntarily waived his presence

The parties next dispute whether defendant validly waived his right to be present during the commitment trial. Defendant argues the court instructed his counsel to obtain a waiver from defendant after he returned to CSH and had taken his medications, but defense counsel never did so and defendant never waived his right to be present. Defendant further contends, "If, arguendo, it can be argued [he] somehow waived his

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[1]The SVPA does expressly provide, however, that once an individual has been committed under the SVPA and a court has found probable cause "to believe that the committed person's diagnosed mental disorder has so changed that he or she is not a danger to the health and safety of others and is not likely to engage in sexually violent criminal behavior if discharged," the committed person has the right to be present at a hearing on a petition for unconditional discharge. (Welf. & Inst. Code, § 6605, subd. (a)(2) & (3).)

right to be present, the purported waiver was unavailing as it was improperly forced upon him by the jail personnel's unwarranted deprivation of his medications." The People respond defendant "informed the court he chose not to be present except when he was required," and "his attorney chose to proceed in [defendant]'s absence when he could not be contacted for confirmation." They further contend defendant's "personal waiver of presence was not required in the SVP proceeding," and "[t]he record fails to show [defendant] was deprived of medication that was important either for his health or his participation in the trial."

Notably, even a constitutional right to be present can be waived. (See *People v. Espinoza*, *supra*, 1 Cal.5th at p. 72 ["[T]he right [to be present] is not an absolute one…. It may be expressly or impliedly waived"]; *People v. Cunningham*, *supra*, 61 Cal.4th at p. 633 ["As a matter of both federal and state constitutional law, … a defendant may validly waive his or her right to be present during a critical stage of the trial, provided the waiver is knowing, intelligent, and voluntary"]; see also *People v. Gutierrez*, *supra*, 29 Cal.4th at p. 1206 [court need not obtain written or oral waiver of statutory right to presence if other evidence indicates defendant voluntarily chose to be absent].) And here, after being advised of his right to be present and his right to confrontation, defendant expressly and clearly stated, through his counsel, on the record, that he wanted to waive his presence. Defense counsel reported he advised defendant of the benefits and burdens of his decision before defendant ultimately decided to waive his presence. Defendant reiterated his waiver after the court advised him of his right to confrontation and his right to be present, stating he had "completely made up [his] mind." True, the court informed defendant his counsel would follow up with him once defendant had returned to CSH, and it instructed defense counsel to follow up with defendant on Friday and the following week. But the court also instructed defendant to notify his counsel if he changed his mind, and defense counsel repeatedly attempted to contact defendant to no avail. There is no evidence defendant attempted to contact his counsel or otherwise tried to attend the

next three days of trial. Indeed, the day defendant appeared to testify, he voiced no objection to the fact the trial had continued in his absence.

Based on our independent review of the record, we conclude the totality of the facts supports the trial court's conclusion defendant knowingly, intelligently, and voluntarily waived his right to be present. Furthermore, his actions following his express representations on the record—namely, his failure to express to the court or his attorney that he changed his mind or to object to the trial proceeding taking place in his absence when he appeared—amounted to an implied waiver of his right to be present. Thus, we also conclude substantial evidence supports the trial court's conclusion defendant was voluntarily absent during trial. (See *People v. Gutierrez, supra,* 29 Cal.4th at p. 1206 ["While a defendant's express waiver in front of the judge might be the surest way of ascertaining the defendant's choice, it is not the only way. A defendant's 'consent need not be explicit. It may be implicit and turn, at least in part, on the actions of the defendant'"]; see also *People v. McDonald* (2013) 214 Cal.App.4th 1367, 1385 [defendant orally waived due process right to be present during commitment trial].)

Defendant argues his counsel did not have the authority to waive defendant's presence on his behalf. In support, defendant relies upon *People v. Fisher, supra,* 172 Cal.App.4th 1006. In *Fisher,* the prosecution moved for a judicial determination authorizing the administration of an involuntary psychotropic medication to the defendant pursuant to Welfare and Institutions Code section 5300. (*Fisher, supra,* at p. 1011.) The defendant was not present the day the matter was set for hearing, and his counsel advised the court that when he spoke to the defendant that day "'at one point in the conversation, he said he wanted to be here.'" (*Ibid*.) Despite this representation and the defendant's absence, the hearing proceeded and the court heard a doctor's testimony by stipulation and admitted his evaluation into evidence. (*Ibid*.) The defendant appeared days later and testified on his own behalf. (*People v. Fisher, supra,* at pp. 1011–1012.) On appeal, Division Six of the Second District Court of Appeal held, under the circumstances of that

case, the defendant's "constitutional right to a fair hearing was violated … because he did not personally waive his right to be present and was not unable to attend the hearing," but the court concluded the error was harmless beyond a reasonable doubt. (*Id*. at p. 1014.)

The circumstances here are markedly different from those in *People v. Fisher*. Here, defendant was present on the day his case was set for trial and he personally advised the court of his desire to waive his presence. His counsel told the court, in defendant's presence, that he had discussed with defendant the burdens and benefits of defendant's attendance and defendant decided he did not want to attend. The court again advised defendant he had the right to be present and confront the witnesses against him, and defendant himself advised the court his mind was made up, he did not want to be present. His counsel's subsequent representation that defendant had expressed his intention not to appear was supported by the record. There is no evidence defendant ever changed his mind or otherwise expressed a desire to attend. On this record, we find no error. (See *People v. Jernigan* (2003) 110 Cal.App.4th 131, 137 [defendant impliedly waived his right to be present at competency hearing where he was present when judge set date and time for competency hearing so he knew when it was to be held, judge advised defendant of his right to hear and present evidence, and there was no evidence defendant was involuntarily excluded from hearing].)

Defendant further contends even if he did waive his right to be present, the waiver was ineffective. He contends any alleged waiver was forced by the Tulare County jail's refusal to give him his necessary medication and, "[f]orcing [defendant] to appear at trial without his necessary, prescribed medications 'presented' '"an unacceptable risk … of impermissible factors coming into play."'" But the record does not reflect defendant would be forced to appear at trial without his "necessary, prescribed medications." Rather, it reflects defendant reported not receiving various personal items at the jail, including nongenerics of his medications. In response, the trial court asked defendant to permit it to investigate the situation further and, alternatively, offered to have defendant

returned to CSH and brought back the following week, but defendant refused. Instead, defense counsel stated he and defendant decided defendant's presence was not necessary. The court emphasized to defendant he had the right to be present and confront witnesses and, in response, defendant reiterated his decision to waive his presence. On this record, we conclude defendant's waiver of the right to be present was knowing, intelligent, and voluntary even if it was motivated in part by his desire to return to CSH. (See *People v. Cunningham, supra,* 61 Cal.4th at p. 634 ["find[ing] no constitutional infirmity in defendant's waivers of his right to be present at pretrial proceedings and the guilt phase, even assuming such waivers were motivated in part by concerns about the in-transit shackling that would have accompanied his appearing in court"].)

C. Defendant's absence was harmless

Defendant asserts the alleged violation of his due process rights was per se reversible error. Alternatively, he asserts the error was not harmless beyond a reasonable doubt because he could have assisted defense counsel in cross-examining witnesses and pointed out factual discrepancies in the doctors' testimony.

Contrary to defendant's contentions, the California Supreme Court has held "[e]rroneous exclusion of the defendant is not structural error that is reversible per se, but trial error that is reversible only if the defendant proves prejudice." (*People v. Perry* (2006) 38 Cal.4th 302, 312; see *People v. Perez* (2018) 4 Cal.5th 421, 438 ["Although the exclusion of the defendant from a critical proceeding constitutes error, it is not structural error"]; *People v. Bradford* (1997) 15 Cal.4th 1229, 1357 ["Defendant has the burden of demonstrating that his absence prejudiced his case or denied him a fair trial"].) Under the federal Constitution, error pertaining to a defendant's presence is evaluated under the harmless beyond a reasonable doubt standard set forth in *Chapman v. California* (1967) 386 U.S. 18, 23. (*People v. Davis* (2005) 36 Cal.4th 510, 532.)

Here, even assuming, arguendo, the court erred in proceeding with the trial in defendant's absence, we conclude the alleged error was harmless beyond a reasonable doubt. Defendant argues, if he had been present, "he could have assisted defense counsel in cross-examining the witnesses," "pointed out to counsel what he believed to be factual errors in the doctors' testimony," and "suggested further avenues of cross-examination" such that "the doctors' testimony … could have been significantly less convincing." But he does not explain, nor can we speculate, what alleged "factual errors" or "further avenues" he could have told his counsel to pursue that could have altered the outcome of trial. (See *People v. Bradford*, *supra*, 15 Cal.4th at p. 1358 ["defendant has failed to explain how his attendance during the testimony of these witnesses would have altered the outcome of his trial and, accordingly, has not demonstrated any prejudice"].)

Moreover, defendant's argument is belied by his counsel's representations to the court made in defendant's presence before the doctors testified. In advising the court defendant wanted to waive his presence during the majority of his trial, defense counsel emphasized he and defendant agreed defendant's presence was not "necessary for [defense counsel] to cross-examine the doctors on how they came to their conclusion[s]." (See *People v. Bradford*, *supra*, 15 Cal.4th at p. 1358 ["Defendant notes his absences during the testimony of several witnesses, but fails to observe that he expressly had requested to be absent during their testimony, and that defendant and his counsel specifically were concerned that his adverse behavior would be detrimental to his case, should he be required to remain in court"].)

Finally, defense counsel thoroughly cross-examined the People's doctors, whose testimonies were persuasive. Indeed, even defendant's own expert deemed defendant to be at high risk of reoffending. Defendant was subsequently present and had the opportunity to testify on his own behalf. On this record, we conclude defendant has not established prejudice; rather, any alleged error related to the trial proceeding in defendant's absence was harmless beyond a reasonable doubt. (See *People v. Fisher*,

supra, 172 Cal.App.4th at pp. 1014–1015 [defendant's absence during doctor's testimony at commitment hearing was harmless beyond a reasonable doubt where defense counsel thoroughly cross-examined doctor, whose testimony was compelling, and defendant was thereafter present and had opportunity to rebut doctor's assertions].)

We reject defendant's sole contention.

DISPOSITION

The trial court order committing defendant as an SVP is affirmed.

PEÑA, J.

WE CONCUR:

HILL, P.J.

FRANSON, J.